IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO.5078 OF 2004

Pravesh Grover @ Tinkoo .. Applicant

versus

Sanjay Poojari & Anr. .. Respondents

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Mr.A.G. Lalla for the applicant.

Mr.P.M. Pradhan with Mr.D.N. Salvi for the respondent no.1.

Mr.D.P. Adsule, APP for the State.

CORAM : V.M. KANADE, J

DATED : 22nd December 2004.

P.C:-

1. Heard the learned counsel appearing on behalf of the applicant and the learned counsel appearing on behalf of the respondent.

2. This is an application for bail filed by the

applicant interalia on the ground that the applicant though was arrested on 20th December 2003 at 7.35 p.m. was produced before the Magistrate on 22nd December 2003 beyond the period of 24 hours. It is submitted that apart from this statement of the applicant recorded by the Investigating Agency u/s.67 of the NDPS Act, there is no other material to implicate the accused. It is submitted that in view of the illegal detention of the applicant, there is a clear breach and violation of the provisions of Article 21 and 22 of the Constitution of India and also section 57 of the NDPS Act and sec.167 of the Code of Criminal Procedure. It is submitted that the applicant is permanently residing at New Delhi and had visited the premises of his sister where he was detained on 20th December 2003 and certain contraband was seized by the Officer of the Narcotics Control Bureau. Application for bail preferred by the applicant before the Special Judge was rejected by order dated 23rd September 1994. Thereafter, this present application has been preferred in this Court. The learned counsel appearing on behalf of the applicant has relied on the judgement of this Court in 1994(1) Bom.C.R. 64 in the case of Suaibo Ibow Cassama vs. Union of India & Anr. wherein this Court has held that in the event of

violation of the mandate of Article 21 and 22 of the Constitution of India, the detention of a person beyond 24 hours was illegal. In the said judgement, the learned Single Judge of this Court relied on similar orders being passed by this Court in cases where the accused under the NDPS Act was illegally detained beyond the period of 24 hours. In paragraph no.7 of the judgment, the learned Single Judge has relied on decisions of this Court in 3 criminal applications where bail was granted by this Court. In the said order, this Court further has observed that the provisions of section 37 of the NDPS Act cannot overwrite the provisions of Article 21 or 22 of the Constitution of India.

3. The learned counsel appearing on behalf of the respondent has submitted that the applicant was infact arrested on 21.12.2003 at 5.40 p.m. He submitted that in the present case, 7 persons were arrested and the total quantity of heroine seized was 18 kgs and 150 gms from two residential premises. He submitted that a panchnama was prepared on 20.12.2003 and after the conclusion of the panchnama, the Officers came back to their office along with the applicant at about 21 hrs on 20.12.2003 and the statement of the applicant was

recorded on 21.12.2003. It was submitted that the applicant was only summoned by the Officers for the purpose of investigation as they had not arrived at a conclusion regarding the involvement in the case. It was submitted that only after the statements were recorded, Officers of the NCB decided to arrest him at 7.40 hrs on 21.12.2003 and thereafter within 24 hours, the applicant was produced before the Addl.Chief Metropolitan Magistrate, Esplanade Court on 22.12.2003. It was therefore, submitted that there was no illegal detention of the applicant.

4. In my view, the statement made by the learned counsel appearing on behalf of the respondent will have to be accepted. It is difficult to come to a conclusion that the applicant was detained after 20.12.2003. The summons was issued to the applicant and the investigation was going on in the case and the panchnama was concluded on 20th December 2003. The statement of the applicant was recorded thereafter. Though it is alleged in the application that there was a restriction on the movement of the petitioner after 20.12.2003, it cannot be said that the accused was illegally detained as in the affidavit in reply it has been explained that the panchnama was concluded in the

late hours of 20th December 2003 and thereafter, the statement of the applicant was recorded on the next day. The Investigating Agency therefore, had not finally taken a decision regarding the involvement of the accused in the present case and it was only after they had arrived at a conclusion his involvement he was arrested on 21st December 2003 at 5.40 a.m.

5. In the facts of the present case therefore, it is difficult to come to a conclusion that the applicant was illegally detained from 20.12.2003. thus, the ratio of the judgment in the case of Suaibo Ibow Cassama Vs. Union of India (Supra) will not be applicable to the facts of the present case.

6. Application for bail is therefore rejected. Hearing of the appeal is expedited.

V.M. KANADE, J